Special Report No. 24
May 2003

to the Legislative Assembly
of British Columbia

Acting in the Public Interest?

Self-Governance in the Health Professions: The Ombudsman's Perspective

Ombudsman
British Columbia

National Library of Canada Cataloguing in Publication Data

British Columbia. Office of the Ombudsman.

Acting in the public interest? : self-governance in the health professions : the Ombudsman's perspective

ISBN 0-7726-4990-1

1. Medical personnel - British Columbia. 2. Professional associations - British Columbia - Administration. 3. Health services administration - British Columbia. 4. Medical personnel - Government policy - British Columbia. I. Title.

R728.3.B74 2003 610.69'09711 C2003-960132-3

Table of Contents

Introduction 1

Recent Developments in the Self-Regulation of the Health Professions in British Columbia 4

The Ombudsman's Experience in Investigating Complaints against the Colleges 9

Accountability and the Appointment of Public Representatives 14

Conclusions 15

Introduction

This is a report about the experience of the Office of the Ombudsman in investigating complaints about the self-governing bodies of the health professions.

Where the public may be vulnerable to harm as a result of inappropriate conduct on the part of a professional, some mechanism must exist to protect the public interest. The history and tradition in the western world has been that the professions are granted the privilege of self-governance. The self-governing bodies of the professions, which I will refer to in this report as the 'colleges' or 'college' as the case may be, receive no government funding. The professions elect governors from their membership, and pay fees which cover the cost of running the colleges. In recent years, a number of the newer health professions have attained the privilege of self-regulation, with the result that almost all health care workers are now regulated members of colleges.

This system offers protection to the public in several ways. One of these is the right to make a complaint to a college about the conduct of a professional. The college must assess the complaint, and if appropriate, conduct an investigation. Where inappropriate conduct is established, the college must then impose a penalty that will safeguard the public interest. Both the public and the professional may be dissatisfied with the college's decision. The professional may have the remedy of going to court; members of the public, however, have historically had very little opportunity to challenge the college's disposition of a complaint. They could not complain to the provincial government, and had no standing to appear in court. There was no other avenue of accountability.

This changed in 1993, when my Office was given authority to investigate complaints about the colleges. We receive complaints not only from members of the public who are dissatisfied with the college's disposition of their complaints, but also from professionals who are dissatisfied either with the college's board or with the merits of a decision. My Office now has considerable experience in investigating complaints about the colleges, but as I issue this report I must advise the public that budget cutbacks have forced me to cease these investigations. My position on the nature and effect of these cutbacks has been documented more fully in my February 2003 **Special Financial Report** to the Legislature, so I will not go into further detail here except to say that the lack of resources means that, in general, I can no longer carry out this part of my mandate. I do, however,

continue to have discretion to take on special investigations of complaints about the colleges where I believe it is in the public interest to do so.

This restriction on our ability to investigate complaints comes at a time when government has also been reviewing the governance of the health professions. Many of the more serious complaints that come to me also come to the attention of the Ministry of Health Planning, whose staff, consequently, has become involved in what might be termed informal oversight of the colleges. Recently, a senior official of the Ministry wrote to a college in the following terms:

> The Ministry is increasingly dismayed by the inability of the Board of the College of … to fulfill its statutory roles and responsibilities as a self-governing profession. Correspondence, discussions and meetings with Board representatives have all shown a clear lack of understanding of the obligations that flow from designation under the ***Health Professions Act***. Moreover, a consistent pattern of actions – or, in some cases, a pattern of failure to act – by the Board have served to underscore either the lack of ability or the lack of willingness to assume full responsibility for its mandate under the ***Act***....
>
> We have regretfully come to the conclusion that the Board continues to demonstrate a completely unacceptable level of effectiveness in the governance of the profession. While the paramount objective of the College is to protect the public, there is ample evidence that this is simply not being achieved. The shortcomings in the regulation of [the profession] constitute a threat to the public by reason of the failure to safeguard the public from practitioners who may be incompetent, unethical or acting outside the bounds of their authorized scope of practice.
>
> The overriding responsibility of the College is to protect the public from harm. However…the Board appears to be incapable at the present time of properly managing its members effectively. As a result, I am concerned that the College may be neglecting its primary mandate and exposing the public to unacceptable levels of risk.

It seems reasonable to assume that it was concerns such as these that caused the Minister, the Honourable Sindi Hawkins, to propose certain amendments to the ***Health Professions Act***. In 2002, the Minister circulated a document entitled '***Proposals to***

Amend the Health Professions Act: Improving Governance and Accountability'. Some of the proposed amendments would have given government formal power to intervene in the management of the colleges if the public interest was not being served. These powers included the ability to appoint a public administrator to exercise the powers, duties, and functions of a college's board. The Minister's proposals have given me some comfort in making my decision to cease investigating college complaints, knowing that other remedies may be available at least in the most serious cases.

In issuing her report, the Minister stated:

> Designation as a health profession requires that the governing body regulate its members in the public interest at all times. This is a significant responsibility that is delegated by the government to the colleges of self-regulating professions, which carry out this responsibility on behalf of the government. However, even though this authority is delegated, the government is ultimately responsible for ensuring that colleges effectively regulate their members in order to protect public health and safety.
>
> From time to time some colleges have encountered difficulties in effectively carrying out their mandate and have failed to act in the public interest in carrying out their regulatory responsibilities. In previous situations where the public has been exposed to potential risk resulting from the failure of a college to adequately regulate its members, the government has had no power to intervene or take steps to protect the public. (p.7)

My experience in investigating complaints about the colleges confirms the Minister's observation that some colleges have failed, on occasion, to act in the public interest in carrying out their mandate. Some colleges have demonstrated a fundamental lack of understanding of their legal responsibilities and of the requirements of fairness not only to members of the public but also to members of their professions. In other cases, the professions do not appear to have fully accepted or understood what it means to act in the public interest. They still believe, perhaps because it is the members who elect the governors and pay for the colleges' operations, that the colleges are primarily there to protect the interests of the members.

In recent years we have seen successive elections fought among the dentists, the psychologists, and the opticians on the basis that the colleges are 'unbalanced' in that

they give too much weight to the public interest and too little to the interests of the professionals involved. Members of these professions have campaigned on platforms promising greater sympathy and understanding of the human foibles that lead to mistakes. It was perhaps not surprising that some colleges would strongly object to the government's proposed new powers, and in particular, to the power to appoint a public administrator. A review of their submissions, many of which have been made public on college websites, is instructive in demonstrating the extent to which some of the professions have come to see self-government as an absolute right rather than a privilege.

Unfortunately, the Minister has now withdrawn the public administrator provisions, and has modified some of the other proposed amendments. Even in this modified form, we believe the amendments will be of assistance to the government in carrying out its responsibility to protect the public interest. We understand that the professions have generally come to recognize the legitimacy of the proposed amendments. However, the absence of sufficient resources for my Office to continue investigating complaints against the colleges means that those aggrieved by college decisions, whether members of the public or of the professions, no longer have the opportunity for review by a body that is independent of government. A major avenue of accountability has been closed.

Recent Developments in the Self-Regulation of the Health Professions in British Columbia

There are a number of health professions with a long history of self-regulation in the province. The physicians (since 1867), the nurses (since 1918), and the dentists (since 1886) are the most obvious examples. Some professions, such as the psychologists (since 1977), have been self-regulating for a surprisingly short time, while other health care providers were entirely unregulated until recently. It has been the practice for each of the regulated professions to operate under its own separate statute.

In 1990, the government of the day introduced the ***Health Professions Act***. As originally contemplated, the purpose of the ***Act*** was to:

> ...establish self-governing powers for a variety of health professions that are currently unregulated. The proposed bill would provide a mechanism to regulate individuals who offer health care to the public, or who practise in a health-related profession where there is some degree of risk to health and safety of the public....
>
> The regulation of these groups would help to protect the public by setting standards for education, training and practice. Implementation of such standards is expected to lead to general improvements in the effectiveness and quality of the overall health system....
>
> This bill is significant for a number of reasons. It will enable the government to respond more quickly where a need to regulate a health profession has been established. The bill is a more efficient means by which to standardize the regulatory process across a wide range of health professions. This bill signals the determination of government to be more attentive to the exercise of self-governing powers by health professions. (The Honourable Minister of Health J. Jansen, July 17, 1990, Hansard, p. 11088)

Apart from the concept of introducing self-regulation in new sectors of the health care system, the government was innovative in seeking to regulate these new professions under the same statute, instead of following the older practice of introducing new statutes for each profession. The ***Act*** also created the Health Professions Council, the purpose of which was to consider applications for designation under the ***Act*** from prospective self-regulating professions and to make recommendations to the Minister. In the absence of an application, the Minister could also direct the Council to investigate and determine whether a profession should be designated. The scope of practice of the designated profession was also to be considered by the Council. This involved a review of which services, or acts, could be practised only by a particular profession (known as 'reserved acts'), and which acts could be performed by members of more than one profession.

The 1991 British Columbia Royal Commission on Health Care and Costs, chaired by the late Mr. Justice Peter Seaton, expanded on the concepts introduced by the new ***Health Professions Act*** and changed the landscape considerably. 'Closer to Home', as the Seaton report is entitled, made an important observation about self-regulation:

> The purpose of regulating members of a profession is to protect the public from preventable harm. The privilege of self-regulation is granted to a profession by the provincial legislature. It is a social contract between the profession and the public. It is the property of the public the profession claims to serve. (D-28, Vol.2)

The Commission observed that despite the identical purpose of each self-regulating body, the professions were operating under different, inconsistent statutes. These inconsistencies could lead to significant, undesirable anomalies in the regulation of the professions. The Commission stated:

> In general, a lack of consistency characterizes the acts with respect to complaints, discipline and appeals, resulting in insufficient public accountability, no uniformity in the structure or organization of the different statutes, and an absence of common terms. The areas of greatest inconsistency are:
>
> - the college's rule-making authority
> - the way complaints are received and addressed
> - the requirement to report incompetent members
> - the power to discipline former members
> - the use of pre-hearing suspensions
> - the availability of judicial restraining orders or injunctions
> - the description of the acts or omissions which may lead to disciplinary action
> - the type of disciplinary action which may be imposed
> - the awarding of costs at the end of a disciplinary hearing and the maximum amount which can be awarded
> - the procedures by which disciplinary hearings are initiated, held and resolved
> - the member's rights, such as notification of hearings and obtaining a decision with reasons
> - the procedures to address a member's failure to appear at a hearing
> - the college's powers at a hearing
> - the right of appeal, what may be appealed and the limitation period for initiating an appeal
> - the requirement that an internal review take place prior to initiating an appeal to the Supreme Court and the requirements for such a review. (D34-35, Vol. 2)

I have quoted at some length from the Commission's list of inconsistencies to show that these were not insignificant concerns, but rather related to essential aspects of the task of self-regulation. There was no obvious justification for such inconsistencies between the professions. The Commission therefore recommended that all existing statutes governing individual health care professions be repealed and that all of the professions be regulated under a revised version of the ***Health Professions Act***. This would mean the repeal of such statutes as the ***Medical Practitioners Act***, the ***Nurses (Registered) Act***, and the ***Dentists Act***.

The Commission also pointed to the need for increased separation in some of the professions between activities designed to promote the interests of the profession, and self-regulatory activities promoting the public interest. Some professions still carried out both functions under the same roof, potentially blurring the primary mandate to act in the public interest.

The new Health Professions Council embarked on a review of all of the existing self-regulatory statutes to determine whether it was in the public interest for these professions to instead be regulated under the ***Health Professions Act*** (HPA). The Council was faced with strong opposition to the proposal that some professions should cease to operate under their own statutes. While the professions made a number of important and legitimate observations about technical deficiencies in the HPA, the main thrust of their submissions was that it was fundamentally unfair that they should lose their own statutes. They argued that regulation under the HPA was in some way a loss of independence, an encroachment on the 'right' to self-regulate. Government was said to be 'taking over' the professions.

The Council noted:

> The Terms of Reference [for the Council] reflect a general policy that designation under the HPA is the favoured option. They refer to the desirability of minimizing the number of statutes that govern the health professions and the importance of a high degree of consistency among statutes. The Terms of Reference also direct the Council to consider specifically whether there are unique features of a health profession or other relevant factors that justify a separate statute. Thus, the onus is on the profession to establish why a separate statute is in the public interest. (***Safe Choices: A New Model for Regulating Health Professions in British Columbia***, Part II, Volume 2, p.2)

The Council also reviewed applications for designation as a self-regulating profession under the HPA from previously unregulated groups, and from some regulated professions that felt their own statutes were deficient. By March of 2001, when the Council reported out, they had completed reviews and made recommendations regarding the permitted scopes of practice and reserved acts for each profession, and had completed reviews of the legislation governing existing professions. With the exception of the profession of emergency medical assistance, they recommended that all of the health professions be regulated under the HPA.

The Minister of Health Planning's July 2002 document entitled **Proposals to Amend the Health Professions Act: Improving Governance and Accountability** was a response to the Council's recommendations. Despite the objections of the professions, the Minister has concluded that there should be no exceptions to the general principle that all of the professions should be regulated under the HPA. The Minister also introduced amendments that would give government direct power to intervene in the operations of a college where required in the public interest. The Minister stated:

> Under the amendments, government will have new powers to enquire into the functioning of a college, and to direct a board of a college to act where it is determined to be necessary. In addition, the government will have the ability to appoint a public administrator to carry out the functions of a board in extraordinary circumstances if it is necessary to protect the public. These types of circumstances could include cases where a board failed to properly enforce legislation, including limits on professional scope of practice – for example, if a board condoned the use of equipment or procedures which the professional is not authorized to administer, and which place patients at risk. The proposed changes would enable the government to respond more effectively to these types of situations. (p. 7)

These significant amendments were set out in the proposed ss.18.1, 18.2, and 18.3 of the HPA. Section 18.1 would have given the Minister the power to inquire into any aspect of the administration or operation of a college, including the exercise or failure to exercise a power or duty under the HPA, the regulations, or the college's bylaws. Under s.18.2, colleges would have been required to comply with written directives of the minister concerning the discharge of their responsibilities. Finally, s.18.3 allowed cabinet to dismiss the board and instead appoint a public administrator to operate a college.

As noted, there was considerable opposition to these proposals. The Minister has now circulated second and third drafts of the amendments, which accommodate some of the objections raised, and also respond to various observations about technical problems with the proposed amendments. While the right to appoint a public administrator is gone, the proposed amendments retain the right of the Minister to initiate an inquiry into 'any aspect of the administration or operation of a college' or into 'the state of practice of a health profession' (s.18.1). Section 18.1(2) states that this power:

> ...includes inquiry into an exercise of a power or a performance of a duty, or the failure to exercise a power or perform a duty, under this Act, the regulations or the bylaws of a college or its board.

Under s.18.2, cabinet may then issue a directive to the board of the college:

> ...requiring the board to exercise the powers, duties or functions of the board under this Act, the regulations or the bylaws of the college to address the issues that were the subject of the inquiry under section 18.1. (s.18.2 (2)(a))

Responses from the colleges to the first draft of these proposals have led the Minister to add a limitation on the exercise of these powers, so that they cannot be used to establish clinical standards for the profession or be directed against an individual registrant. While I regret the Minister's decision to forego the power to appoint a public administrator, I understand the factors that led her to do so. However, I am confident that the modified amendments will still provide government with a much needed power to intervene where necessary.

The Ombudsman's Experience in Investigating Complaints against the Colleges

Perhaps the most surprising aspect of our experience in investigating complaints against the colleges has been the sometimes negative responses and lack of cooperation we have occasionally received. We very rarely, if ever, experience this during investigations of other public bodies, and I suspect the reasons may lie in some important differences

between the colleges and other authorities under my jurisdiction. Most public bodies recognize that they are directly accountable to the public, and more specifically, to the electorate. The Ministers who direct government operations are constantly held accountable through the legislature, through the media, through complaints to MLA constituency offices, and through the independent officers of the legislature. These include not only my Office, but also the offices of the Auditor-General and the Information and Privacy Commissioner. Public bodies are accustomed to the idea that they are accountable, and while they may not always enjoy the scrutiny of outside bodies, they recognize the necessity and generally cooperate with us in good faith.

It would be unfair and irresponsible to say that the colleges are indifferent to the public interest. There is no doubt that for the most part, the colleges strive to ensure that the public is protected from what the professions define as being unsafe or unethical practitioners. However, this does not mean that the colleges consistently function as though they were directly accountable to the public. It may be that because college directors are elected by the registrants, who also have the exclusive responsibility to fund college operations through what are sometimes viewed as very expensive license fees, the sense of accountability to the public is minimized.

In all of the colleges there is considerable sensitivity to the views of college members, who after all are constituents and electors. Their views may be expressed in annual general meetings, and, of course, in the success or defeat of candidacies for the board, often an important aspect of status in the profession. There is thus a strong sense of accountability to the profession. The fact that there is no direct means by which the public may hold a college accountable may lessen the sense of accountability to the public. To the extent that the Ombudsman has been a vehicle for accountability to the public, these factors may explain some of the resistance to and indeed, disinterest in our viewpoint that we have encountered in investigations over the last ten years.

It may be helpful to outline how my Office has investigated complaints against the colleges, and to describe in more detail the kinds of complaints I received until my recent budgetary decision to cease accepting such complaints for investigation. Unlike ombudsmen in some other jurisdictions (notably, the United Kingdom) I have chosen not to review complaints against the colleges on the merits. That is to say, where a complaint relates to the merits of a clinical professional judgement, I do not attempt to assess the clinical issues except in rare cases where the college's decision is clearly inconsistent

with the evidence before it. In reviewing college complaints, I typically focus on the fairness and adequacy of the investigative and review processes used by the college.

Another important factor in all Ombudsman investigations is that I do not have the power to make orders. The ***Ombudsman Act***, which is virtually identical to the legislation in other provinces, gives me the power to make findings of unfairness where I see fit, but I cannot order that such unfairnesses be rectified. I can only make a recommendation to that effect. There are many reasons for this limitation, and in the investigation of complaints against other public bodies we have not generally found it an impediment to reaching a fair resolution. It may be, however, that in the investigation of complaints against the colleges, the absence of an order-making power is a more significant problem when combined with the colleges' limited sense of direct accountability to the public.

When we first began to investigate complaints against the colleges, we assumed that virtually all of the complaints would be made by members of the public rather than by members of the professions. In fact, there has been a quite striking difference between the larger and smaller colleges in this respect. In the older and larger colleges, virtually all of the complaints are made by members of the public. In the smaller colleges, which are sometimes but not always the most newly regulated professions, the vast majority of the complaints are made by members of the profession.

What do these complaints involve? Complaints from members of the public are usually directed to the merits of the college decision: the complainant disagrees with the decision on the merits, typically where the complaint has either been dismissed by the college as being without merit, or where the penalty is perceived to be inadequate. In such cases, my staff reviews the college's file to ensure that a thorough investigation has been conducted, even though we may choose not to express any opinion on the clinical issues. These complaints may also involve procedural fairness issues such as delay and failure to provide adequate reasons for decisions, and more substantive concerns such as bias or the apprehension of bias. Over time, we have noted that certain colleges tend to acquire a distinctive complaint profile because the same kinds of complaints tend to recur on a regular basis. For example, there are some colleges where the only complaints made relate to delay, and others where that is never a concern. I should note that there are a few colleges about which we have received very few complaints, and in some cases, none whatsoever. Although our dealings with these colleges have necessarily been few, we have been impressed by the high degree of commitment and transparency they exhibit in treating both their registrants and the public fairly.

However, most of the complaints we receive from the public reflect an underlying lack of confidence that the colleges are capable of reviewing complaints about their fellow professionals fairly and objectively. This is a very difficult barrier to surmount, and, of course, one that is not limited to the health professions. This fundamental lack of public confidence in the principle of self-regulation makes it all the more important for the professions not only to actually assess complaints fairly and objectively, but also to clearly and transparently demonstrate that they have done so. In his 1991 Annual Report, my predecessor, the Honourable Stephen Owen, Q.C., commented on these issues:

> The way that a professional association deals with complaints from the public about the actions of its members is the litmus test of self-regulation. In designing a complaint-handling system, the profession must appreciate that the most common concern of individual members of the public is not with the occasional, highly publicized cases of sexual misconduct, financial defalcation, or gross incompetence. Rather, it is with the little injustices of delay, arrogance, rudeness, indifference and sloppiness that irritate and alienate clients from their professional agents. A process for receiving and dealing effectively with complaints must accommodate more than professional 'capital crimes' and address these less dramatic but wider impact concerns quickly and effectively.
>
> A complaint system must also be a participatory process. The complainant must understand the nature and timing of the process, be given a direct and effective role in setting out his or her concerns, and be advised of the outcome and the reasons for it. While there may well be a need for confidentiality in the process, the complainant should still be given sufficient reasons to understand, and therefore respect, the outcome, particularly if no disciplinary action is to be taken. Otherwise, notwithstanding the validity of the outcome, public distrust will undermine the integrity of the process. (pp.15-16)

Unfortunately, arrogance, paternalism and the influence of professional power structures are sometimes evident in complaints about the health professions, and this is a particular concern in the absence of an effective remedy for those who are dissatisfied with a college's decision.

Complaints from members of the colleges vary considerably. One might have expected that most of these complaints would relate to the fairness of a disciplinary penalty

imposed against the complainant, but that is not the case. Instead, most of these complaints relate to various aspects of the college's policies, procedures, and management of its operations. In some colleges we have been surprised by both the frequency and acrimony of complaints made by board members against each other, and by complaints that reflect serious disagreement between boards and their professional staffs about the nature of the duty to act in the public interest. Disputes between board members, or between boards and their professional staffs, can render a college unable to act. We have been disturbed by cases in which professional staff have correctly advised the board about their responsibilities, but the advice has been ignored, reflecting a poor understanding on the part of board members of the nature of their legal and fairness obligations.

Most of the more experienced colleges, whether large or small, are reasonably well attuned to the requirements of fairness and natural justice in dealing with disciplinary proceedings against their members. They are big enough to be able to afford legal advice and understand the necessity of obtaining it where appropriate. In the smaller colleges, the cost of preventative legal advice is often a serious impediment, and as many of their members cannot afford to litigate, they have not had the opportunity to learn from the experience of unfavourable court rulings. It may well be that this lack of practical access to the court system is what prompts the large number of registrant complaints to my Office involving the smaller colleges. A reluctance to obtain legal advice is a particular problem where members of the college board and committees lack a sufficient understanding of the legal and fairness issues involved in self-regulation.

What is of even greater concern about these member complaints is the extent to which they involve an abuse of power on the part of these newer and/or smaller colleges. The power to regulate under the HPA gives board members enormous power over the economic livelihood and professional success of their registrants. I have received complaints that involve excessive license and other fees, financial conflicts of interest, financial mismanagement, bias allegedly resulting from competition for clients within the profession, invalid elections, ad hoc procedures that clearly conflict with the HPA or college bylaws, the unilateral imposition of so-called 'consent' orders, unreasonably large fines, and unreasonable disciplinary penalties. Many of these complaints appear to have merit, but in some cases it has been surprisingly difficult to obtain the colleges' agreement to rectify the unfairness.

Members of the various colleges have attempted to deal with these issues through internal channels, including annual and special general meetings, without success. I believe my Office has played an important role in requiring college boards to give meaningful consideration to some of these concerns, and to take steps to correct these abuses of power. Unfortunately, even though government is increasing and formalizing its oversight role, the Ministry of Health Planning will not be able to investigate individual complaints, whether from registrants or members of the public.

Accountability and the Appointment of Public Representatives

Since the late 1980s, government has been appointing public representatives to the boards of all of the self-regulating professions in an attempt to increase accountability and provide some voice for the public viewpoint. The proportion of these to elected board members has increased over time, as has the number of college committees upon which they are required to sit. This ensures that there is public representation on such important committees as the Inquiry Committee, which investigates complaints and decides whether disciplinary measures are necessary, and on disciplinary and appeal panels.

Under the HPA as it now stands, a minimum of one-third and a maximum of one-half of the total board must be non-members of the profession appointed by the Minister of Health Planning to represent the public interest. Proposed amendments to the HPA would allow the creation of an executive committee, in which case one-third of its members must be public appointees. The Ministry will not approve bylaws for a college unless each of the other committees is also composed of at least one-third public representatives. This ensures that there is public representation at each stage of the investigative and disciplinary process, including the penalty phase.

It is beyond the scope of this report to conduct a scientific study of the impact of the public representatives, but these initiatives are a step in increasing the public voice in self-regulation. Questions arise, however, about the ability of these individuals to provide independent guidance in college decisions. As non-clinicians, they do not have the expertise to determine whether a complaint involving a clinical issue is being correctly decided. Unless they are knowledgeable in the law of self-regulation, the requirements of

natural justice, and the duty of fairness, they may also lack the ability to assist the colleges in treating their registrants and the public fairly and transparently. We understand that the Ministry has had some difficulty in recruiting sufficient numbers of qualified people. There is also a perception that at least in some cases, the public representatives have been 'captured' by the colleges to which they have been appointed and are no longer able to provide an independent voice.

On the other hand, it is interesting to note that in at least one college, the role of the public representatives has become a major source of contention. Some members of the profession feel that it is inappropriate for them to be regulated by unelected non-professionals, and have called for the '...return [of] the College to self-regulation by the elected officers'.

Nonetheless, I do believe this mechanism has the potential to play an important role in the colleges. It is critical, however, that those appointed have appropriate skills and knowledge to play a strong role on college boards and committees.

Conclusions

As my comments will have made evident, I support the Minister's proposed amendments to the ***Health Professions Act***. Although I continue to believe that there are circumstances under which the public administrator provisions might have been necessary, the amendments as they currently stand will nonetheless provide government with additional powers that will increase accountability to the public in the self-governing health professions. It may be the case that the process of consultation the Ministry has undergone with respect to the proposed amendments has in itself been helpful in educating the colleges about public and government perspectives on their activities. There are some indications that even colleges that were initially strongly opposed to the amendments have come to understand the possible necessity for them, and this is a positive development.

If the amendments pass, government will have formal oversight of the colleges' operations. However, it is important to note that any government interventions that result will not involve review by a body that is independent of government. Both the registrants of the colleges and members of the public may well feel that it is preferable, in view of the

independent standing of the professions, that there be an independent review body to address complaints about the colleges. In the absence of appropriate funding for the Office of the Ombudsman, it is no longer possible for me to fulfill that role.

Howard Kushner
Ombudsman
Province of British Columbia

Mailing Address:

Office of the Ombudsman
931 Fort Street
PO Box 9039 Stn Prov Govt
Victoria BC V8W 9A5

Telephone:

General Inquiries: (250) 387-5855
Toll Free: 1-800-567-3247

Fax:

Fax: (250) 387-5855

Or visit our website at:

http://www.ombudsman.bc.ca